

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H,  
MARY DOE and MARY ROE, on  
behalf of themselves and all others  
similarly situated,

No. 2:22-cv-10209

Plaintiffs,

HON. MARK GOLDSMITH

v

MAG. CURTIS IVY, JR.

GRETCHEN WHITMER, Governor  
of the State of Michigan, and COL.  
JAMES GRADY, Director of the  
Michigan State Police, in their  
official capacities,

Defendants.

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**STATE DEFENDANTS' SUPPLEMENTAL BRIEF IN RESPONSE  
TO THE COURT'S JULY 30, 2024 *SUA SPONTE* ORDER**

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Dated: August 6, 2024

**STATE DEFENDANTS' SUPPLEMENTAL BRIEF IN RESPONSE  
TO THE COURT'S JULY 30, 2024 *SUA SPONTE* ORDER**

In accordance with this Court's July 30, 2024 order directing the parties to file supplemental briefs addressing how *People v Lymon*, \_\_NW2d\_\_; \_\_Mich App\_\_ (MSC Docket No. 164685)(issued July 29, 2024) applies to the parties pending motions for summary judgment , the State Defendants submit this short supplement. On review of the Michigan Supreme Court's opinion and the undisputed facts of this case, *Lymon* has no impact on State Defendants' motion for summary judgment.

In *Lymon*, the Michigan Supreme Court held that under the Michigan Constitution it is cruel or unusual punishment to require sex offender registration for a crime that lacks a sexual component and is not sexual in nature. *Lymon*, slip op at 38. But the Court narrowed the significance of its decision, ruling that Michigan's SORA was punitive as applied to an offender whose crime did not include a sexual component.

The dissent asserts that "it is difficult to see how" our holding today will remain limited to non-sexual offenders. Our opinion does not reach the question whether the 2021 SORA constitutes punishment as to sexual offenders—and, in fact, explicitly vacates the portion of the Court of Appeals opinion that so concluded. To

the extent that portions of our Mendoza-Martinez analysis might be relevant to a later appeal that considers whether the 2021 SORA constitutes punishment as to sexual offenders, that relevance does not define the outcome of such a future challenge. The Mendoza-Martinez analysis is cumulative, and while some of our analysis here will be relevant to other circumstances, some will not. Perhaps the effects of the 2021 SORA as applied to sexual offenders are so punitive as to outweigh the Legislature's civil intent, and perhaps not. The dissent's concerns about the effects of today's holding are premature.

*Lymon*, slip op at 30, n20. The *Lymon* opinion did not address whether Michigan's new SORA is punishment for those convicted of offenses including a sexual component. Instead, the Court vacated the portions of the Court of Appeals opinion that went beyond the consideration of non-sexual offenders. *Lymon*, slip op at 38. Consequently, *Lymon* does not resolve the question before this Court: Are Michigan's SORA registration obligations punitive for sexual offenders?

Moreover, with respect to the class of offenders convicted of a crime without a sexual element, *Lymon* confirms the State Defendants' current argument that Count VII of Plaintiffs' complaint should be dismissed as moot. MSP already removed from the registry nearly all the non-sex offense registrants. (ECF No. 129-18, PageID.7552.) The arguments why Count VII is moot was adequately addressed by State Defendants in their earlier briefing. (ECF No. 129, PageID.149–55.)

Therefore, pursuant to Fed. R. Civ. P. 10(c), the State Defendants adopt by reference the arguments made in their Brief in Support of their Motion for Summary Judgment. The State Defendants further note that the *Lymon* opinion highlighted the efforts MSP has taken to remove non-sex offense registrants from the registry.

This narrow holding is workable. As represented by amicus the Michigan State Police, after the Court of Appeals rendered its decision in this case, 295 registrants like defendant who were convicted of non-sexual offenses and whose offenses had no sexual component were removed from the sex-offender registry. Fourteen registrants who were convicted of non-sexual offenses but whose offenses had a sexual component remain on the registry.

*Lymon*, slip op at 38, n24. There is no remaining controversy with respect to the class of offenders governed by Count VII of the amended complaint.

## CONCLUSION AND RELIEF REQUESTED

The Court should deny Plaintiffs' motion for summary judgment and grant Defendants' motion for summary judgment under Rule 56.

Respectfully submitted,

/s/Scott L. Damich

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**CERTIFICATE OF SERVICE (E-FILE)**

I hereby certify that on August 6, 2024, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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## LOCAL RULE CERTIFICATION

I, Scott L. Damich, certify that this document complies with Local Rule 5.1(a), including double-spaced (except for quoted material and footnotes): at least one-inch margin on top, sides, and bottoms; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 points (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

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